IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15-6-2007

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

C.M.A.No.1878 of 1999
and Cross Objection No.68 of 2000

Metropolitan Transport Corporation Ltd.,
rep.by its Managing Director, Ayanavaram,
Chennai - 600 023.
(formerly known as Dr.Ambedkar
Transport Corporation Ltd.)
(CT Accepted vide order
dated 06.12.99 in CMP.4746/99) ... Appellant in CMA.1878/1999 &
Respondent in Cross.Obj.68/2000

Vs.

V.R.Gopal ... Respondent in CMA.1878/1999 &
Cross Objector in
Cross Objection 68/2000

The Civil Miscellaneous Appeal and cross Objection are preferred against the award dated 26.2.1999 made in MACTOP No.3460 of 1996 on the file of the Motor Accident Claims Tribunal (VI Judge, Small Causes Court), Chennai.

For Appellant in CMA.1878/1999 : Mr.J.Mahalingam
for M/S.S.Ramachandran
B.Sivagama Sundari

& Respondent in Cross Objection
For Respondent in CMA.1878/1999 : Mr.K.V.Subramani,
& Cross Objector Senior Counsel
for Mr.N.Jothi

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COMMON JUDGMENT

C.M.A.No.1878 of 1999 is preferred by the Metropolitan Transport Corporation challenging the order of the Motor Accident Claims Tribunal dated 26.2.1999 made in M.C.O.P.No.3460 of 1996 insofar as the awarding Rs.3,26,440/- as compensation to the claimant. The Claimant has filed Cross Objection 68 of 2000 for the disallowed portion of his original claim of Rs.7,00,000/-.

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2. The claim petition was filed by the injured claimant alleging that on 23.8.1996 at 2.45 p.m. when he was riding cycle in the junction of Bricklin road and Purasawalkam High Road from north to south, the bus belonging to the Transport Corporation bearing registration No.TN-02-N-0295, driven in a rash and negligent manner by the driver of the Transport Corporation Bus, dashed against him and he was thrown five feet away and in the said accident, he sustained grievous injuries and that his cycle was also damaged. Hence the Claimant has filed the claim petition claiming compensation of Rs.7,00,000/-.

3. The Tribunal, on the basis of the FIR registered against the driver of the Bus and after analysing the evidence of the Driver and Conductor of the Bus, who were examined as RWs.1 and 2, the report of the Motor Vehicle Inspector and the sketch prepared by the Police Ex.P-14, came to the conclusion that the Bus hit against the Claimant from behind and held that the accident had occurred only due to the rash and negligent driving of the Driver of the Transport Bus.

4. Further, the Tribunal, on the basis of Ex.P-13, which was spoken to by PW-2, found that the Claimant sustained fracture of bones in the front side hip, consequent to which the Urinary tube was damaged and alternative Urinary track was fixed and due to the bone fracture, plate is fixed in the right side hip. It is also found that his kidney is also damaged and due to the same the Claimant could not sit in a place for long time and is having complication in excretory system, due to which, once in every two weeks dilatation is to be conducted. The Doctor assessed the disability as 85%. The Claimant was admitted in Aysha Hospital, Chennai-10, from 23.8.1996 to 24.10.1996 as inpatient as could be seen from Ex.P-1 and from 14.3.1997 to 10.4.1997 as could be seen from Ex.P-2. The Tribunal also found that separate tube is fixed through which only the Claimant is passing urine and therefore the Claimant requires continuous treatment. After giving such a finding the Tribunal awarded compensation of Rs.80,000/- towards partial disability and for loss of earning capacity and Rs.1,87,440/- towards medical expenses already incurred as per Exs.P-3 to P-6. The Tribunal also observed that due to the accident the Claimant voluntarily retired from service two years prior to his normal date of retirement as per Ex.P-9, for which a sum of Rs.50,000/- is awarded on the basis of Ex.P-11. Further, a sum of Rs.5,000/- towards pain and suffering and Rs.2,000/- each towards transportation and nourishment is also awarded by the Tribunal. Thus, the Tribunal awarded a total sum of Rs.3,26,440/- with 12% interest.

5. The learned counsel appearing for the appellant submitted that the Tribunal erroneously found that the accident had occurred due to the negligent driving of the bus and the Tribunal ought to have held that due to the contributory negligence of the Claimant as well as the Driver of the bus the accident had occurred. Learned counsel also submitted that the quantum of Rs.80,000/- awarded towards loss of earning capacity is not

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justified because the petitioner prematurely retired and towards that count, a sum of Rs.50,000/- is separately awarded. The learned counsel also submitted that the award of 12% interest is on the higher side.

6. The learned Senior Counsel appearing for the Claimant/Cross Objector on the basis of the grounds raised in the Cross Objection submitted that the findings given as to how the accident had occurred is legal and based on the oral and documentary evidence and having found that the accident had occurred due to the rash and negligent driving of the driver of the bus, the Tribunal ought to have determined the amount of compensation which is just and proper as per Section 168 of the Motor Vehicles Act. The learned counsel also read out paragraph 7 of the award where the Tribunal narrated the hardships faced by the injured Claimant due to the accident which will be a continuing painful disability requiring continuous medical treatment for which no amount is awarded. The learned Senior counsel also submitted that no amount is awarded to compensate the loss of amenities in life and prayed for enhancing the compensation to that of Rs.7,00,000/- as claimed in the Claim petition.

7. I have considered the rival submissions of the learned counsel for the appellant as well as respondent/Cross Objector.

8. A criminal complaint was admittedly given against the driver of the bus viz., Pushparaj and after investigation, the Police filed charge sheet in C.C.No.8247 of 1996 before the Chief Metropolitan Magistrate, Egmore, for the offences under section 184 of the Motor Vehicles Act and section 338 IPC. Based on the criminal complaint, the Police inspected the scene of occurrence and prepared observation mahazar and sketch Ex.P-14. On the side of the Transport Corporation, the Driver and Conductor were examined as RW-1 and RW-2. The Tribunal found that the driver of the bus RW-1 deposed during cross-examination that he noticed the accident through the side mirror. The conductor of the bus RW-2 deposed that he has not seen the accident directly. Therefore, the Tribunal disbelieved the versions of RW-1 and RW-2 and relied on the observation mahazar and sketch Ex.P-14. The Tribunal also gave a specific finding that the Police independently enquired into the matter and in the report it is stated that the injured claimant was riding the cycle in front of the bus and the bus hit against the injured. The Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the bus. There is no error in the said finding and the same is hereby confirmed.

9. Insofar as the quantum of compensation is concerned, PW-2 Doctor gave evidence based on the medical certificate Ex.P-13 and he has narrated the difficulties/sufferings faced by the injured claimant in excretion also. It is also stated by the Doctor that the Claimant is still suffering and he is passing urine through tube and once in every two weeks he has to take dilatation and for future treatments compensation is required to be ordered.

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10. A Division Bench of the Gujarat High Court in the decision reported in 1982 ACJ 491 (Chandrashekhar Madhusudan v. Subas Shankar Shirke and others) considered similar type of disability and explained the same in paragraph 13, which reads thus,

> "13. The evidence clearly establishes, however, that the serious internal injury sustained by the appellant has vitally affected the functioning of one of his excretory systems. The rupture of urethra, which required urgent surgical intervention and which has left a stricture at the point of rupture, has landed the appellant in a physical condition which will require periodical medical intervention to ensure proper functioning of the urinary system. The medical evidence establishes that the appellant will have to undergo dilatation atleast once a month for a very long time or perhaps for the rest of his life and that the failure to take periodical dilatation might create difficulty in passing urine and give rise to complications including dribbling of urine. The evidence establishes that within a period of about one year between the date of his discharge from the hospital and the date of trial, the appellant had taken dilatation six times. Dilatation, as is well-known, is a painful process. The medical evidence herein establishes that it is usually given under local anaesthesia. Besides, it often times leads to infection of the genito-urinary track and to recurrent attacks of cystitis, etc. In some cases, such infection, if uncontrolled, may travel upto the kidney and, in turn, it may lead to the development of renal failure in course of time (see the Medical Assessment of Injuries for Legal Purposes by Arnold Mann, 3rd Edn., 1979, page 119). Though Dr.Thakkar has not deposed about these likely complications, the possibility of their occurrence cannot be ignored, having regard to the prognosis based on the day to day experience of life as reflected in the commentaries in the standard text-books. The post-accident physical condition of the appellant, therefore, is such that besides leading to frequent absences from work and abstinence from leisure activities, it is bound to generate in him a fear of future incapacity as to health or uncertainty of life and a feeling of despondency and remorse and embarrassment. The pain and suffering which the appellant must have felt on receiving the injury and in the course of the medical treatment including the surgical operation rendered

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> necessary by the injury have also not ended. The appellant will be subjected to physical pain and discomfort and suffering from time to time for the rest of his life. It cannot be overlooked also that if for reasons beyond his control the appellant is unable to take timely dilatations, the symptom of dribbling of urine would manifest itself. Indeed, the appellant has deposed that this trouble occasionally manifests itself and that that causes him embarrassment on account of the ridicule to which he is subjected by the onlookers. ....."

Similar sufferings were experienced by the Claimant and according to the Doctor PW-2, he continue to undergo similar sufferings in future also. The said fact is not disputed by the learned counsel for the Transport Corporation. Hence it has to be ascertained, whether the Tribunal has awarded just and proper compensation to the injured claimant and whether the Cross Objection filed by the Claimant is to be considered.

11. The facts about the injuries suffered by the Claimant, disability, the hardships/sufferings faced by the Claimant are not in dispute. The claimant sustained 85% of the disability is not disputed. The Tribunal awarded Rs.80,000/- for 85% disability. As held by the Division Bench of this Court in the decision reported in 2005 (5) CTC 745 (M.Bhagavathy v. Thiruvalluvar Transport Corporation Ltd) for the disability of 85%, the injured Claimant is entitled to get Rs.85,000/- as compensation.

12. Having allowed the said amount, the Tribunal is not justified in awarding compensation of Rs.50,000/- under the head future loss of income, as held by the Full Bench of this Court in the decision reported in 2006 (4) CTC 433 = 2006 (3) LW 1025 (Cholan Roadways Corporation Ltd. v. Ahmed Thambi & 6 others).

13. The Tribunal awarded a sum of Rs.1,87,440/-, the actual medical expenses incurred. But no amount is awarded towards Future Medical Expenses. According to the evidence of the Doctor, the Claimant has to undergo medical treatment continuously. The Honourable Supreme Court in the decision reported in (2003) 2 SCC 274 (Nagappa v. Gurudayal Singh) held that compensation should be awarded for future medical expenses also. Taking note of the provisions contained in the Motor Vehicles Act that after final award is passed, fresh award cannot be passed or previous award cannot be reviewed when the medical expenses are incurred after finalisation of the compensation proceedings, in paragraph 23 of the judgment, the Honourable Supreme Court held as follows,

> "23. However, it is to be clearly understood that the MV Act does not provide for passing of further award after the final award is passed. Therefore, in a case where injury to a victim requires periodical

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> medical expenses, fresh award cannot be passed or previous award cannot be reviewed when the medical expenses are incurred after finalisation of the compensation proceedings. Hence, the only alternative is that at the time of passing of final award, the Tribunal/court should consider such eventuality and fix compensation accordingly. No one can suggest that it is improper to take into account expenditure genuinely and reasonably required to be incurred for future medical expenses. Future medical expenses required to be incurred can be determined only on the basis of fair guesswork after taking into account increase in the cost of medical treatment."

Applying the above principle laid down by the Honourable Supreme Court in the above decision and having regard to the fact that the Tribunal has not awarded any amount towards Future Medical Expenses, I am of the opinion that an award of a sum of Rs.75,000/- would be just and proper towards Future Medical Expenses.

14. The Tribunal awarded a sum of Rs.5,000/- towards pain and suffering. The same is absolutely without any basis as the Claimant had underwent operations five times and he was treated as inpatient twice for more than three months and that there is likelihood of sufferings in future also. Even now the Claimant is suffering due to pain. Hence for the pain and sufferings an amount of Rs.1,00,000/- is ordered as against the award of Rs.5,000/- awarded by the Tribunal.

15. The amount of Rs.2,000/- awarded under the head Transportation is too low and the same is enhanced to Rs.5,000/-. Likewise, towards Extra Nourishment, the award of Rs.2,000/- is enhanced to Rs.10,000/-.

16. The Honourable Supreme Court in the decision reported in (1995) 1 SCC 551 (R.D.Hattangadi v. Pest Control (India) Pvt. Ltd.) in paragraph 9 gave guidelines to award compensation under different heads, which reads as follows,

> "9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they

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> may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

The said judgment is followed by the Honourable Supreme Court in the subsequent decision reported in (2003) 7 SCC 197 (Divisional Controller, KSRTC v. Mahadeva Shetty), wherein paragraph 18 reads thus,

> "18. A person not only suffers injuries on account of accident but also suffers in mind and body on account of the accident throughout his life and a feeling is developed that he is no more a normal man and cannot enjoy the amenities of life as another normal person can. While fixing compensation for pain and suffering as also for loss of amenities of life, features like his age, marital status and unusual deprivation he has undertaken in his life have to be reckoned."

From the above decisions, it is clear that it is the fit case where compensation under the head Loss of Amenities in life can be ordered, for which no amount is awarded by the Tribunal. The claimant at the age of 56 years, sustained serious infirmities and for the loss of amenities, he is entitled to get just compensation for which I am inclined to award a sum of Rs.50,000/-.

17. Thus, the Claimant/Cross Objector is entitled to a total compensation of Rs.5,12,440/- under the following heads:

85% Permanent Disability	..	Rs. 85,000/-
Medical Expenses	..	Rs.1,87,440/-
Future Medical Expenses	..	Rs. 75,000/-
Pain and Sufferings	..	Rs.1,00,000/-
Transportation Expenses	..	Rs. 5,000/-
Extra Nourishment	..	Rs. 10,000/-
Loss of Amenities in Life	..	Rs. 50,000/-
Total	..	Rs.5,12,440/-

18. With regard to the contention of the learned counsel for the Transport Corporation that the interest awarded by the Tribunal is excessive, in view of pronouncement of the Honourable Supreme court in SMT. KAUSHNUMA BEGUM & OTHERS VS. THE NEW INDIA ASSURANCE CO. LTD. & OTHERS (2000(1) Supreme 5) and UNITED INDIA INSURANCE CO. LTD.& OTHERS VS.

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PATRICIA JEAN MAHAJAN & OTHERS (2002) 6 SCC 281, I am inclined to reduce the rate of interest to 9% from 12% per annum from the date of claim petition.

19. In the result, the Civil Miscellaneous Appeal is disposed of and the award of the Tribunal is modified to the above extent. The Cross Objection No.68 of 2000 filed by the injured Claimant is allowed in part by enhancing the compensation amount to Rs.5,12,440/- with 9% interest per annum from the date of the Claim petition instead of the award of Rs.3,26,440/- with 12% per annum, by the Tribunal. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

vr

To

1. The Motor Accidents Claims Tribunal
(VI Judge), Court of Small Causes, Chennai.

2. The Registrar,
Court of Small Causes,
Chennai.

1 cc To Mr.N.Jothi, Advocate, SR.35390.
1 cc To Mr.S.Ramachandran, Advocate, SR.35284.

C.M.A.No.1878 of 1999 &
Cross Obj.68 of 2000

BV(CO)
RVL 17.07.2007

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